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October 24, 2005

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\* ALSO ADMITTED IN GA

Ron Jones, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

*Via Hand Delivery*

Attention: Sharla Dillon

Re: In Re: Application of Sprint Nextel Corporation for Approval of the Transfer of Control of United Telephone-Southeast, Inc., Sprint Long Distance, Inc. and Sprint Payphone Services, Inc. from Sprint Nextel Corporation to LTD Holding Company

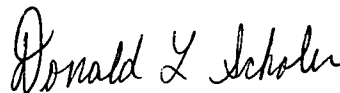
Docket No. 05-00240

Dear Chairman Jones:

I have enclosed for filing an original and fourteen copies of the Reply to Response of Sprint Nextel Corporation and LTD Holding Company to Petition of Communication Workers of America, AFL-CIO for Leave to Intervene in the above-styled case.

I would appreciate your returning to me one copy of the Reply stamped filed for my records. Thank you for your assistance in this matter.

Sincerely yours,



DONALD L. SCHOLES

Enclosures

c: Edward Phillips  
Daniel M. Waggoner  
Thelma Dunlap

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

2005 OCT 24 AM 9:52  
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**IN RE: APPLICATION OF SPRINT NEXTEL CORPORATION FOR APPROVAL  
OF THE TRANSFER OF CONTROL OF UNITED TELEPHONE-  
SOUTHEAST, INC., SPRINT LONG DISTANCE, INC. AND SPRINT  
PAYPHONE SERVICES, INC. FROM SPRINT NEXTEL CORPORATION  
TO LTD HOLDING COMPANY**

**DOCKET NO. 05-00240**

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**REPLY TO RESPONSE OF SPRINT NEXTEL CORPORATION AND LTD HOLDING  
COMPANY TO THE PETITION OF COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO FOR LEAVE TO INTERVENE**

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Now comes the Communications Workers of America (CWA), by and through counsel, and submits this Reply to Response of Sprint Nextel Corporation and LTD Holding Company to the Petition of Communications Workers of America, AFL-CIO for Leave to Intervene.

Statutory and Legal Standard for Intervention

Intervention in this proceeding by CWA is governed by T.C.A. § 4-5-310 and T.C.A. § 65-2-107. The Authority may grant a petition for intervention under two separate subsections of T.C.A. § 4-5-310. Under subsection (a), a timely filed petition to intervene must be granted when (1) the petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interestS may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law and (2) the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by the intervention. Under subsection (b), the Authority may grant a petition to intervene at any time "upon determining that the intervention sought is in the interests of justice and shall not impair the

orderly and prompt conduct of the proceedings.” CWA’s Petition to Intervene meets the requirements of both subsections of T.C.A. § 4-5-310. Under T.C.A. § 65-2-107, the Authority may “allow any interested person to intervene and become a party to any contested case.”

CWA’s Petition to Intervene shows that it is an interested party to this case.

In its Response Sprint Nextel Corporation (Sprint Nextel) asserts that to establish a legal interest in this proceeding to justify its intervention, CWA must “demonstrate a clear injury to itself that can be redressed by the Authority.” Response of Sprint Nextel at 3. Sprint Nextel’s position is contrary to the language in T.C.A. §§ 4-5-310(b) and 65-2-107. The Authority must only find that the interests of justice should permit the intervention or that an intervenor is an interested person in a proceeding to grant the intervention. The Tennessee legislature has not required that a person show an injury which can be redressed by an administrative agency as a prerequisite to an intervention. CWA’s Petition to Intervene fully supports a finding by the Authority that the interests of justice should permit the intervention and that CWA is an interested person in this proceeding

CWA further asserts that it has demonstrated a sufficient legal interest in this proceeding which requires the grant of its intervention under T.C.A. § 4-5-310(a). CWA is not required to show it has a clear injury which can be redressed by the Authority to have a “legal interest” in this proceeding. In *Bellsouth Adver. & Publ'g Corp. v. Tenn. Regulatory Auth.*, 2001 Tenn. App. LEXIS 102 (Tenn. Ct. App. 2001)(copy of pertinent portion of opinion attached), the Tennessee Court of Appeals rejected Sprint Nextel’s position when it stated, “Tennessee Code Annotated § 4-5-310 does not require a petitioner for intervention to seek affirmative relief.” CWA is not required to have the same legal standing to intervene in this proceeding which a party must have to intervene in a court action under Rule 24 of the Tennessee Rules of Civil Procedure.

### CWA's Petition to Intervene States a Sufficient Legal Interest to Justify its Intervention

CWA represents approximately 325 employees at United Telephone--Southeast, Inc. (UTSE). In its Petition CWA has expressed its concern that the proposed capital structure of LTD will impact the financial viability of the new holding company which may adversely impact the employees of UTSE which will in turn have a direct impact on the quality of service being rendered by UTSE to the consuming public. CWA member employees and the consuming public have a vital stake in the outcome of this proceeding. CWA member employees are performing and will be performing the day-to-day operations of UTSE before and after any approved change in control. CWA members who are employed by UTSE are in a unique position to assist the Authority in determining the potential adverse impact the transfer of control will have on the quality of service to UTSE's consumers and to UTSE's ability to deploy advanced telecommunication services.

In its Petition Sprint Nextel alleges that UTSE will continue to have the financial, technical and managerial capabilities to provide quality telecommunication services and that the transfer to LTD is in the public interest. The Authority must explore the facts and grounds upon which Sprint Nextel relies to support these allegations in this proceeding. According to Sprint Nextel an important component of this review is the ability of UTSE to "employ personnel experienced and dedicated to the provision of service in Tennessee." Sprint Nextel Petition at 11. Sprint Nextel recognizes that LTD and its subsidiaries must "maintain and evolve comprehensive compensation and benefit programs that allow the company to recruit and retain highly qualified and motivated employees." Sprint Nextel Petition at 11. Therefore, the employment impact of the proposed transfer of control is an essential issue in this proceeding and is an integral part of the Authority's determination of whether UTSE will continue to have

the financial, technical and managerial capabilities to provide quality telecommunication services and whether the transfer to LTD is in the public interest.

Therefore, CWA's interest in the employment impact to its members of the proposed transfer of control of UTSE is an important issue in this proceeding. Information regarding how Sprint Nextel and LTD plan to divide Sprint's pension assets, life insurance assets, retiree health fund assets and other employee compensation issues must be closely reviewed by the Authority to determine whether after the change in control UTSE will be able to continue to "maintain and evolve comprehensive compensation and benefit programs that allow the company to recruit and retain highly qualified and motivated employees." The quality of installation, maintenance, repair and customer service requires the continued employment of trained, career employees. Not only do CWA members have a direct interest in service quality issues, but the Authority should avail itself of the contribution which CWA and its members can make on such issues by permitting the CWA intervention.

In at least two other states, Pennsylvania and Missouri, state regulatory commissions have recognized the interests of CWA in the transfer of control petitions of Sprint Nextel by allowing CWA to intervene in the Sprint Nextel filings. Petition of Sprint Nextel Corporation, Docket Nos. A-313200F0007, A-311379F0002 (Pennsylvania Public Utility Commission) and Application of Sprint Nextel Corporation, Case No. IO-2006-0086 (Missouri Public Service Commission). See Exhibit A attached to this Reply. CWA has filed a request to intervene in the Sprint Nextel transfer of control proceeding in Ohio which request is pending. Joint Application of Sprint Nextel Corporation and LTD Holding Company, Case No. 05-1040-TP-ACO (Ohio Public Utilities Commission) CWA intends to intervene in other states in which it has an interest in the outcome of the Sprint Nextel transfer of control proceedings in those states.

Moreover, many state regulatory commissions have recognized CWA's interest in pending telephone cases and have permitted it to intervene in a number of proceedings, including this Authority. See Exhibit A.

CWA's Intervention Will Not Impair the Orderly and Prompt Conduct of this Proceeding

The employment impact of the proposed transfer of control on UTSE and how it affects UTSE's services is a vital issue in this proceeding. CWA's participation in this case will assist the Authority in its review of this issue and possibly other issues as well. CWA's participation will not "stall" this proceeding. CWA's members are performing the daily tasks which determine and affect UTSE's quality of service to its customers in Tennessee. CWA can assist the Authority in the deliberate process of determining whether the grant of the Sprint Nextel Petition is in the public interest.

Pursuant to T.C.A. § 4-5-310(c), the Authority or its hearing officer assigned to this case may impose conditions upon CWA's participation to prevent any undue delay which might affect the orderly and prompt conduct of this proceeding. The Pennsylvania Public Utilities Commission and Missouri Public Service Commission have already allowed CWA to intervene the Sprint Nextel proceedings in these states. Therefore, the intervention of CWA in this proceeding in Tennessee is not going to delay the separation of LTD from Sprint Nextel should it obtain the necessary approvals in the change of control from all state regulatory commissions which must act on and approve the change of control.

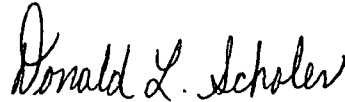
Conclusion

CWA has met its burden of showing that it has a legal interest in this proceeding and is entitled to intervene under T.C.A. § 4-5-310(a). In the event the Authority determines CWA is not entitled to intervene as of right under T.C.A. § 4-5-310(a), CWA has clearly shown that the

interests of justice warrant its intervention under T.C.A. § 4-5-310(b) and that it is an interested person in this proceeding under T.C.A. § 65-2-107.

Dated October 24, 2005

Respectfully submitted,

A handwritten signature in cursive script, reading "Donald L. Scholes".

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DONALD L. SCHOLLES BPR #10102  
Branstetter, Kilgore, Stranch & Jennings  
227 Second Avenue North, Fourth Floor  
Nashville, TN 37219  
615-254-8801

Attorney for Communications Workers of America,  
AFL-CIO

## **EXHIBIT A**

### **CWA Interventions Granted Before State Commissions** **As of October 17, 2005**

#### **Sprint-Nextel Spin-Off of Local Sprint Telephone Companies**

- Pennsylvania. Docket Nos. A-313200F0007, A-311379F0002. CWA filed a Protest on Sept. 26, 2005 and is a party to the case.
- Missouri. Case No. I)-2006-0086. CWA filed a Motion to Intervene on Sept. 16, 2005 and was granted intervention by the Missouri PSC on Sept. 28, 2005.

#### **Other CWA Interventions Granted**

##### **Ohio**

- AT&T/SBC Merger. Case No. 05-269-TP-ACO (2005)

##### **Arizona**

- AT&T/SBC Merger. Docket Nos. T-033327A-05-0149, T-02428A-05-0149, T-03811AA-05-0149, T-0116A-05-0149, T-03182A-05-0149, T-03016A-05-0149 (2005).
- Tariff Review Proceeding (1999)
- Slamming/Cramming Rules (2002)
- Deregulation of Competitive Products Proceeding.
- Qwest/DEX Sale Proceeding (2003)

##### **California**

- AT&T/SBC Merger. Application 05-02-027 (2005)
- MCI WorldCom/Sprint. Application 99-12-012 (2000)
- Triennial Review Proceeding. A.01-02-024, A.01-02-035, A.02-02-031, A.02-02-032, A.02-02-034, A.02-03-002 (2003)
- AT&T Broadband/Comcast Merger. (2002)
- SBC Section 271 application (2002)
- Bell Atlantic/GTE Merger. (1999)
- MCI/WorldCom Merger. (1998)
- Application of SBC for Authority to Categorize Local DA Service as a Category III Service. Application 02-07-050
- TURN v. Pacific Bell (Marketing practices). Case 98-04-004
- OIR on Consumer Protection Rules (Telecom Bill of Rights). Rulemaking 00-02-004
- SBC/Pacific Bell Merger (1997)



### Connecticut

- SBC-SNET Merger. Docket No. 98-10-15 (1998)
- Investigation into SNET 1998 Work Stoppage. Docket No.98-10-15Re02 (1998)

### Indiana

- Triennial Review Proceeding. Cause No. 42393 (2003)

### Massachusetts

- Implementation of Triennial Review Order– large business customers. Docket No. 03-59
- Implementation of Triennial Review Order – mass market. Docket No. 03-60

### Minnesota

- AT&T/SBC Merger. Docket No PT-6432, PT-6433/PA-05-349 (2005)

### Nebraska

- Aliant/ALLTEL Merger. (1999)

### North Carolina

- MCI WorldCom/Sprint Merger. Docket No. P-7 SUB912, P-10 SUB557, P-294, SUB 20, P-806 SUB 1, SC-1338, SUB 1, SC-1474-SUB 2 (2000)

### New Jersey

- Alternative forms of regulation. Docket No. TO 99120934 (2000)
- Verizon Application to provide inter-lata service. Docket No. TO 0109541 (2001)
- Implementation of FCC Triennial Review Order Docket No.TO 0309075 (2003)
- Triennial Review Proceeding. Docket No. TO00060356 (2004)

### New York

- Verizon/MCI Merger. Case No. 05-C-0237 (2005)
- AT&T/SBC Merger. Case No. 05-C-0242 (2005)
- Intermodal Competition Proceeding. Case 05-C-0616 (2005)
- Implementation of a UNE Rate Transition Plan. Case 04-C-0420 (2004)
- Verizon UNE Rates. Case 04-C-0529 (2004)
- Implementation of FCC Triennial UNE Review Decision Case 03-C-0821 (2003)
- Frontier Complaint against Vonage. 03-C-1285 (2003)
- Network Reliability Proceeding. Case 03-C-0922 (2003)
- Global Crossing-Citizens. Case No 00-C-1415 (2001)
- Allegations that Verizon Engages in Fraudulent Reporting. Case 01-C-0440 (2001)
- Modification of Performance Regulation Plan. 00-C-1945 (2000)
- Service Quality of Special Services. Case 00-C-2051 (2000)
- Verizon Retail Service Quality. Case 00-C-0971 (2000)
- Verizon Performance Assurance Plan. Case 99-C-0949 (1999)

- Bell Atlantic-GTE Merger. Case 98-C-1443 (1998)
- Service Quality Proceeding. Case 97-C-0139 (1997- 2000)
- NYNEX/Bell Atlantic Merger. Case 96-C-0603 (1996)

#### Pennsylvania

- Verizon/MCI Merger. A-310580F0009, A-310752F0006, A-310364F0003, A-312025F0005, A-310407F0003, A-310401F0006 (2005)
- AT&T/SBC Merger. A-31163F0006, A-310213F0008, A-310258F0005 (2005)
- MCI/WorldCom Merger. No. A-312025 F.0002, et al. (1998)

#### Tennessee

- BellSouth Entry into Long Distance (Interlata) Service in Tennessee, Docket No. 97-00309
- Application of BellSouth Long Distance, Inc., Docket No. 97-01404
- Application of Bellsouth BSE, Inc., Docket No. 97-07505

#### Texas

- MCI WorldCom/Sprint Merger. PUC Docket No. 21835, SOAH Docket No. 473-00-0272 (2000)

#### Utah

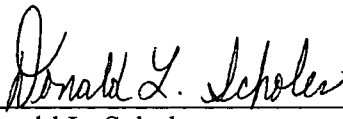
- AT&T/SBC Merger. Docket No. 05-2427-01

**Certificate of Service**

I hereby certify that a true and exact copy of the Final Judgment has been mailed first class, postage prepaid, on this 24<sup>th</sup> day of October, 2005 to the following:

Edward Phillips  
14111 Capital Boulevard  
Wake Forest, NC 27587-5900

Daniel M. Waggoner  
Davis Wright Tremaine LLP  
2600 Century Square  
1501 Fourth Avenue, Suite 2600  
Seattle, WA 98101-1688

  
\_\_\_\_\_  
Donald L. Scholes

**BELLSOUTH ADVERTISING & PUBLISHING CORPORATION v. TENNESSEE  
REGULATORY AUTHORITY, ET AL.**

**Nos. M1998-00987-COA-R12-CV, M1998-01012-COA-R12-CV**

**COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE**

**2001 Tenn. App. LEXIS 102**

**February 16, 2001, Filed**

**NOTICE:** [\*1] [EDITOR'S NOTE PART 1 OF 2  
THIS DOCUMENT HAS BEEN SPLIT INTO  
MULTIPLE PARTS ON LEXIS TO ACCOMMODATE  
ITS LARGE SIZE EACH PART CONTAINS THE  
SAME LEXIS CITE ]

**SUBSEQUENT HISTORY:** Application for Permission  
to Appeal Granted July 9, 2001

**PRIOR HISTORY:** Appeal from the Tennessee Regu-  
latory Authority at Nashville, Tennessee Nos. 96-01692  
& 98-00654

**DISPOSITION:** Judgment of the Tennessee Regulatory  
Authority Reversed

**LexisNexis(R) Headnotes**

**COUNSEL:** Paul S Davidson and Guilford F Thornton,  
Jr , Nashville, Tennessee, and James F Bogan, III and  
Daniel J Thompson, Jr , Atlanta, Georgia, for the appel-  
lant, Bellsouth Advertising & Publishing Corporation

Henry Walker and K David Waddell, Nashville, Ten-  
nessee, for the appellees, Nextlink Tennessee, L L C and  
Tennessee Regulatory Authority

**JUDGES:** WILLIAM B CAIN, J , delivered the opinion  
of the court WILLIAM C KOCH, JR , J , filed a con-  
curring opinion with Judge Cain specifically concurring  
in Part VI thereof PATRICIA J COTTRELL, J , filed a  
dissenting opinion

**OPINIONBY:** WILLIAM B CAIN

**OPINION:**

In these cases consolidated on appeal, Bellsouth Ad-  
vertising & Publishing Corporation (BAPCO) appeals

from the action of the Tennessee Regulatory Authority  
requiring it to brand the [\*2] covers of its "White Pages  
Directory" with the names and commercial logos of local  
telecommunication companies in competition with its  
parent corporation Bellsouth Telecommunications, Inc  
(BST) We reverse the judgment of the Tennessee Regu-  
latory Authority Judge Cottrell dissents

This case represents the consolidation of two differ-  
ent, but intricately linked, administrative appeals con-  
cerning BellSouth Advertising & Publishing Corporation  
(BAPCO) The first, *BellSouth Advertising and Pubub-  
lishing Corp v Tennessee Regulatory Authority, et al*  
(the AT&T case hereinafter) concerned a claim origi-  
nally brought by American Telephone & Telegraph, Inc  
(AT&T) seeking to have its name and logo placed on the  
covers of the "White Pages" directories published by  
BAPCO By order entered March 19, 1998, the Tennes-  
see Regulatory Authority (TRA) Required BAPCO to  
place AT&T's name and logo on the cover of its "White  
Pages"

The aforementioned AT&T declaratory order was  
interpreted and applied in a proceeding wherein  
NEXTLINK L L C , and similarly situated telecommuni-  
cations companies sought to "brand" BAPCO's "White  
Pages" cover along with AT&T Because of the substan-  
tial similarity of [\*3] the issues, these two cases were  
consolidated for consideration in this court While cer-  
tain issues raised in the Nextlink case are of no conse-  
quence in the AT&T case, and thus must be considered  
separately, the crucial issues are common to both cases

This crucial, sub-constitutional issue presents the  
question of whether or not the TRA, under Tennessee  
law and Tennessee Regulatory Authority Rule 1220-4-2-  
.15, can compel BellSouth Advertising and Publishing  
Corporation to display, on the cover of its "White Pages"  
telephone directory, the name and commercial logo of  
local telecommunication companies that are competitors  
of BellSouth Telecommunications, Inc , giving such

of the White Pages directories in a size and style comparable to the name and logo of BellSouth

*In Re Petition of Nextlink to Sanction Bellsouth*, Order enforcing T.R.A. Rule 120-4-2- 15 and denying sanctions, Tenn Regulatory Auth No 98-00654 (Nov 2, 1998)(footnotes omitted)

TRA declined to impose sanctions upon BAPCO and BAPCO timely appealed the November 2, 1998 order

BAPCO on appeal asserts three issues

1 That BAPCO's procedural due process rights were violated when the TRA refused to allow BAPCO to submit evidence on whether or not Nextlink was a "similarly situated competitive local exchange carrier "

2 The March 19, 1998 order, which is the subject of the AT&T appeal, is *res judicata* of the claims of Nextlink

3 That BAPCO's appeal of the AT&T order divested the TRA of any jurisdiction [\*46] of the Nextlink case

The TRA's November 2, 1998 order is so completely and correctly dispositive of these three issues on appeal as to require little discussion. Nextlink is a certified, competitive local exchange telephone company providing local service in competition with BST, and its White Pages customers are published in the BAPCO "White Pages" directories. It is, thus, in the only context at issue, "similarly situated" as a matter of law, and further proof is neither necessary nor proper.

If the agency and the individual disagree only with respect to the way in which the law applies to an uncontested set of facts, additional procedures cannot possibly enhance the accuracy of the factfinding process, simply because the agency does not need to resolve any factual controversies. This is a familiar principle that administrative law borrows from the concept of summary judgment in civil procedure.

Kenneth C Davis & Richard S Pierce, Sr, Administrative Law Treatise, § 9.5 (3d ed 1994)

Likewise, *res judicata* is not applicable to this case. Intervention in this case [\*47] is governed by *Tennessee Code Annotated* § 4-5-310 and not by Rule 24 of the Tennessee Rules of Civil Procedure. Rule 24.03 Tennessee Rules of Civil Procedure provides that one seeking to intervene must accompany his intervention motion with a " . . . pleading setting forth the claim or defense for which intervention is sought." Tenn. R. App. P. R. 24.03. *Tennessee Code Annotated* § 4-5-310 does not require a petitioner for intervention to seek affirmative relief. In

the AT&T case Nextlink did not seek or receive specific affirmative relief.

In the AT&T action for a declaratory order TRA Rule 1220-4-2- 15 was already long in existence having been adopted in 1968. The AT&T adjudication sought an interpretation of this rule.

Administrative agencies typically perform both legislative and adjudicative functions. These functions are closely related, and the line between them is not always clear.

Rule making is essentially a [\*48] legislative function because it is primarily concerned with considerations of policy. It is the process by which an agency lays down new prescriptions to govern the future conduct of those subject to its authority.

*Tennessee Cable*, 844 S.W.2d at 160-61 (citations omitted)

In the AT&T case the TRA interpreted its rule. The Nextlink case sought to enforce the previous interpretation of this same rule. Application of this rule is an executive or administrative function. *In re Cumberland Power Co.*, 147 Tenn. 504, 509-513, 249 S.W. 818, 819-20 (1923). The TRA correctly held that Nextlink is not barred by *res judicata*.

Finally, no stay order having been issued in the AT&T appeal, the TRA was free to enforce its decision in the Nextlink proceeding. See *Tenn. Code Ann.* § 4-5-322(c).

## IX. CONCLUSION

Because we find that neither state nor federal law allows the TRA to compel BAPCO to brand its White Pages cover with the name and commercial logo of "competing telecommunications service providers" in competition with BST, and because we further find, as articulated by Judge Koch in his separate [\*49] concurring opinion, that such order imposes "forced speech" upon BAPCO in violation of the First Amendment of the Constitution of the United States, both the AT&T case and the Nextlink case are reversed. The issues of alleged violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, together with the trademark issues asserted in the AT&T case, are pretermitted. The other issues raised by BAPCO in the Nextlink case are without merit. Costs of the AT&T case are assessed against AT&T. Costs of the Nextlink case are assessed one-half against Nextlink and one-half against BAPCO.

WILLIAM B. CAIN, JUDGE

CONCURBY: WILLIAM C. KOCH, JR.